

SENATE BILL 457
By Rochelle

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 6, relative to general contractors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 6, is amended by adding Sections 2 through 29 as an appropriately designated new part.

SECTION 2. This part shall be known and may be cited as "the Home Builders Licensing Act of 2001".

SECTION 3. It is the policy of this state, and the purpose of this part, to regulate the homebuilding and private dwelling construction industry and to provide for the licensure of those persons who engage in homebuilding and private dwelling construction. Home builders may pose significant harm to the public when unqualified, incompetent, or dishonest homebuilding contractors provide inadequate, unsafe, or inferior building surfaces. The legislature finds it necessary to regulate the residential homebuilding construction industry.

SECTION 4. As used in this part, unless the context otherwise requires:

- (1) "Board" is the home builders licensure board;
- (2) "Contracting" means, except as herein provided, engaging in residential and private dwelling construction business as a contractor;

(3) "Home builders licensure board" is the board created by this act to regulate the home building and residential construction industry;

(4) "Residential homebuilder" means any person or entity who performs or causes to be performed or constructs a residential building or structure for sale or who, for a fixed price, commission, fee or wage, undertakes or offers to undertake the construction or superintending of construction of any building or structure which is not over three (3) floors in height and which does not have more than four (4) units in an apartment complex, when the costs of undertaking exceeds twenty-five thousand dollars (\$25,000). Nothing herein shall prevent any person from performing these acts on his or her own residence or on his or her real estate holdings. Anyone who engages or offers to engage in such undertakings in this state shall be deemed to have engaged in the business of residential homebuilding; and

(5) "Residential building or structure" means one (1), two (2), three (3), or four (4) family unit residences not exceeding three (3) stories in height and accessory use structures in connection therewith.

SECTION 5.

(a) There is created a state board for licensing residential homebuilders, hereinafter called the "board", to be appointed by the governor. The board shall be composed of seven (7) members, all of whom shall be residents of this state and at least five (5) of whom shall be actively engaged as residential home builders, one (1) of whom shall be a certified codes inspector and one (1) of whom shall not be engaged as a residential home builder in any county of this state. All board members who are required to be in the business of residential homebuilding shall have been actively engaged in that business for a period of not less than ten (10) years immediately preceding their appointment and shall be licensed as residential contractors in the state of Tennessee. In making appointments to the board, the governor shall strive to ensure that at least one

(1) person serving on the board is sixty (60) years of age or older and at least one (1) person serving on the board is a member of a racial minority. Those members of the board who are residential home builders shall be appointed by the governor from a list of nominees submitted by the Home Builders Association of Tennessee.

(b) The terms of the members shall be for a seven (7) year period and staggered so that the term of at least one (1) member shall expire each December 31.

(c) In the event of death, resignation, or failure of a member to serve the full term, a successor shall be appointed to the unexpired term. Each member shall hold over after the expiration of the member's term until a successor has been duly appointed and qualified. If vacancy shall occur in the board for any cause, the same shall be filled by appointment of the governor.

(d) The governor shall remove any member of the board for official misconduct, incompetency or willful neglect of duty.

(e) Each member of the board shall receive a certificate of appointment from the governor and, before entering upon the discharge of the duties of office, shall file with the secretary of state the constitutional oath of office.

(f) The board, or any committee thereof, shall be entitled to the services of the attorney general and reporter, or the legal department of Tennessee, in connection with the affairs of the board.

SECTION 6. The executive director shall be the same person appointed under Section 62-6-107. The compensation of the executive director shall be fixed by the board.

SECTION 7.

(a) The board shall have the power to make such by-laws, rules and regulations not inconsistent with the laws of Tennessee, as it deems best, subject to the final approval of the commissioner of commerce and insurance.

(b) The board shall adopt a seal for its own use. The seal shall have on it the words "Home Builders Licensure Board, State of Tennessee" and the executive director shall have care, charge, and custody thereof.

SECTION 8.

(a) The board shall meet at least quarterly for the purpose of transacting business.

(b) At the first meeting of each year the board shall elect officers, including a chair, vice-chair, and secretary.

(c) Special meetings of the board shall be held at such times as the board may provide.

(d) Five (5) members shall constitute a quorum at a board meeting.

(e) Due notice of each meeting and the time and place thereof shall be given each member in such a manner as the bylaws may provide.

(f) The board shall meet in each grand division at least one (1) time each year.

(g) The board shall meet within thirty (30) days after appointment for the purpose of organizing and transacting such business as may properly come before it.

SECTION 9.

(a) The executive director shall keep a register of all applicants for license, showing of each, date of application, name, qualifications, place of business, place of residence and whether license was granted or refused.

(b) The books and register of the board shall be prima facie evidence of all matters recorded therein.

(c) A roster showing the name, business address, business telephone number and qualifying agent of each licensed contractor shall be prepared by the executive director of the board. Such roster shall be printed by the board, the expense of which shall be part of the expenses of such board, as provided in § 56-1-302. A copy of such

roster shall be available to be mailed to and placed on file by the clerk of each incorporated city, town and county in the state, and to each licensed contractor, architect and engineer. Such roster shall only be mailed to such persons pursuant to a written request made to the board.

SECTION 10.

(a)

(1) Anyone desiring to be licensed as a residential home builder within this state shall make written application to the board on such forms as are prescribed by the board. The application shall be accompanied by an application fee as set by the board.

(2) If the application is satisfactory to the board, then the applicant is entitled to an examination to determine the applicant's qualifications. This examination may be written and/or oral. The board is entitled to charge each applicant an examination fee as set by the board for each written and/or oral examination.

(3) If the results of the examination of any applicant are satisfactory to the board, then it shall issue to the applicant a certificate authorizing the applicant to operate as a residential home builder in this state.

(4) Whenever any applicant is advised to appear before the board for an interview and fails to appear at the scheduled time and place without notifying the board at least three (3) days in advance, such applicant shall pay an additional fee as set by the board before being rescheduled for interview. In the event of failure to appear for interview on three (3) separate occasions, a new application and fee are required.

(b)

(1) The board shall have discretionary authority in individual cases to modify such criteria for an applicant if the public safety and welfare clearly require such modification and if the board furnishes the applicant with a written statement justifying such modification.

(2) The criteria so established by the board shall include, but not be limited to, a letter of reference from a past client, employer of the applicant or codes administration official as well as a financial statement of the applicant.

(c)

(1) Whenever a partnership licensed as a contractor dissolves, no former member of the partnership shall further undertake contracting before filing a new application with the board and receiving a license.

(2) In case of a merger, purchase by nonstockholders of the majority interest, or reorganization pursuant to a bankruptcy proceeding, of any corporation engaged in residential homebuilding, the corporation shall make written application to the board and obtain a new license before undertaking contracting.

(d)

(1) Upon application of any individual who was formerly a partner in a dissolved partnership, the board shall transfer to such individual the license formerly held by the partnership upon a showing that:

(A) The individual was a partner in a dissolved partnership; and

(B) The current financial statement of such individual meets the requirements promulgated by the board. If such financial statement fails to meet such requirements, the board may in its sole discretion modify the monetary limitation prior to transfer.

(2) The board for transferring such license shall collect a fee as set by the board.

(e)

(1) The board shall transfer, upon application and payment of a fee as set by the board, by any proprietorship or partnership which subsequently incorporates as a Tennessee corporation, the license formerly held by such proprietorship or partnership to such corporation upon a showing that:

(A) The officers or directors or management of the corporation were the owners or managers of the proprietorship or partnership;

(B) A copy of the corporation's charter has been filed with the board;

(C) The partnership or proprietorship is currently in good standing with the board;

(D) The current financial statement of such corporation meets the requirements promulgated by the board. If such financial statement fails to meet such requirements, the board may in its sole discretion modify the monetary limitation prior to transfer; and

(E) All liabilities of the proprietorship or partnership were satisfied prior to incorporation or will be satisfied by the corporation.

(2) The board shall develop an application for such transfer of license.

(f) Notwithstanding the provisions of § 56-1-302(7) to the contrary, all revenues generated from fees, penalties, or interest shall be allocated solely to the home builders licensure board to be utilized for the administration and enforcement of this part.

(g)

(1) Notwithstanding any provision of the law to the contrary, the board may issue a license to any person who establishes such person's competency by

successfully passing a proficiency test or examination for measuring of industry expertise in such work that is administered by the board, and such license shall authorize the licensee to engage in residential homebuilding in this state or any of its political subdivisions.

(2) Such licensee shall be eligible to contract for such work in any county or municipality upon:

(A) Exhibiting evidence of a current certificate of license to the appropriate local officials;

(B) Paying any local licensing fees in effect on May 8, 1992; and

(C) Paying any inspection or permit fees customarily required by any county or municipality for such work. No county or municipality shall require such state licensee or its employees to pass any county or municipal test or examination; nor shall a county or municipality impose any additional requirements upon such state licensee or its employees, nor in any way discriminate against such state licensee or its employees, nor in any way discriminate against such state licensee or its employees on the basis of the licensee's nonresidency within the county or municipality.

SECTION 11. Corporations and partnerships may engage in the business of contracting; provided, that at least one (1) of the major stockholders or partners or full-time employee with a written power of attorney to bind the corporation or partnership has sufficient knowledge of the construction business in which such persons are licensed to perform. If the person who took the examination for the partnership or corporation leaves the firm for any reason, the partnership or corporation must designate an individual to take the examination within three (3) months.

SECTION 12.

(a) A certificate of license expires on the last day of the 24th month following its issuance or renewal, and becomes invalid on such date unless renewed.

(b) Renewal notices shall be mailed ninety (90) days prior to the expiration date of the license. Such renewal must be received in the office of the board thirty (30) days prior to the expiration of such license.

(c) Renewal may be effected at any time during such month by filing with the board a financial statement, which the board may, in its discretion, require to be audited, a report of any personal or corporate bankruptcies, and other such information as the board may require, and by the payment of a fee as set by the board to the executive director of the board.

(d) It is the duty of the executive director to notify by mail every person licensed hereunder of the date of expiration of this certificate of license and the amount of fee required for its renewal for one (1) year. Such notice shall be mailed in accordance with this section.

(e) The fee to be paid for the renewal of a certificate of license after the expiration date shall be increased ten percent (10%) for each month or fraction of a month that payment or renewal is delayed. The maximum fee for a delayed renewal shall not exceed twice the normal fee.

(f) No residential home builder shall be qualified to receive a renewal license when such residential home builder has been in default in complying with the provisions of this part for a period of one (1) year, and in such event the contractor, in order to qualify under the law, shall make a new application as in the case of the issuance of the original license.

(g) The board shall promulgate rules and regulations that establish uniform criteria to govern the review and adjustment of the general construction classifications, specialty classifications, and monetary limitations of certificates of license which are

subject to renewal by the board. Such criteria shall establish a method for identifying those licensees applying for renewal who may require a greater degree of scrutiny by the board than usual.

SECTION 13. Any certificate of license issued by the state board for licensing contractors to any person now in any branch of the armed service of the United States, or who hereafter enlists or is called into service, remains in full force and effect until one (1) year after the person is discharged from service and is subject to renewal at that time by the payment of the annual fee set out in this part.

SECTION 14.

(a)

(1) Whenever any person, firm, or corporation claims to have been damaged or injured by the gross negligence, incompetency, fraud, dishonest dealing and/or misconduct in the practice of contracting on the part of any person, firm or corporation licensed hereunder, files suit upon such claim in any of the courts of record in this state, and recovers judgment thereon, such court may, as a part of its decree or judgment in such case, revoke the certificate of license under which such contractor is operating at the time of the aforementioned wrongdoing.

(2) It is the duty of the clerk of the court to notify the executive director of the board of such revocation.

(b) The board may reissue a license to any person, firm or corporation, whose license has been revoked; provided, that all of the members of the board vote in favor of such reissuance for reasons the board may deem sufficient.

(c) The executive director shall immediately notify the secretary of state and the clerk of each county, of any revocation of a license or the reissuance of a revoked license.

(d) The board has the power to revoke or suspend any license or renewal granted by it for any of the reasons stated in this section, or for a failure to observe the terms and conditions of any license or renewal granted under the provisions of this part or any bylaws, rules or regulations adopted or promulgated by it as provided in § 62-6-108, or for a violation of the terms of any license.

(e) Notwithstanding the provisions of the Uniform Administrative Procedures Act, compiled in title 4, part 5, relative to the amount of civil penalties that may be imposed, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per offense against any person or firm who violates the terms and conditions of an existing license to engage in residential homebuilding or against any person or firm who engages in unlicensed residential homebuilding.

(f) The board shall, in all cases before hearing any charges against a residential home builder, furnish a written copy of the charges against the accused, including notice of the time and place where the charges will be heard, and give reasonable opportunity for the accused to be present and offer any evidence the accused may wish. The accused shall have the waivable right to an attorney if so desired.

(g) The affirmative vote of a majority of the board is necessary to revoke or suspend a license or renewal.

(h) The board may refuse to issue or renew a license to any person, firm or corporation for lack of financial stability, lack of expertise, submission of false evidence with regard to application of license or renewal, conviction of a felony, and any other conduct which constitutes improper, fraudulent or dishonest dealing, or violation of the statute.

SECTION 15.

(a)

(1) Any person, firm or corporation who engages or offers to engage in contracting without a license as required herein or who violates the terms and conditions of any license or renewal granted by the board pursuant to this part, commits a Class A misdemeanor. The penalties imposed by this subdivision shall not apply to a person who engages a contractor without a license for the purpose of constructing a residence for the use of such person.

(2) Any person, firm or corporation who engages or offers to engage in contracting without a license as required herein may be ineligible to receive such license until six (6) months after a determination by the board that a violation has occurred.

(b) Any person, firm or corporation who accepts a bid in excess of twenty-five thousand dollars (\$25,000) from a contractor who is not licensed, with appropriate classifications and sufficient monetary limitations, in accordance with the provisions of this part, commits a Class A misdemeanor.

SECTION 16. The board shall inquire into the identity of any person, firm or corporation operating under the general provisions of this part and shall prosecute any person, firm or corporation violating the provisions of this part.

SECTION 17.

(a) In order to secure the effective enforcement of this part, jurisdiction is conferred on the chancery court of this state to grant injunctive relief against any person, firm or corporation undertaking to engage in the contracting business in violation of the terms of this part.

(b) Such injunction suit shall be filed in the name of the state of Tennessee on relation of the board, or any member thereof, without bond being required for prosecution of the suit or for the issuance of injunction.

(c) Any expenses incurred, such as depositions, travel expenses or attorney fees, required for the prosecution of the suit, shall be paid in the same manner as other expenses incurred by the board.

SECTION 18. A covenant promise, agreement or understanding in or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance, including moving, demolition and excavating connected therewith, purporting to indemnify or hold harmless the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee, the promisee's agents or employees, or indemnitee, is against public policy and is void and unenforceable.

SECTION 19.

(a) The financial statements submitted by contractors shall be treated as confidential and shall be used by the board only for the purposes of determining the qualifications of applicants for licenses.

(b) The comptroller of the treasury or the comptroller's designated representative shall be accorded access to and may examine any financial statement solely for the purpose of a legitimate audit, § 10-7-508 to the contrary notwithstanding.

SECTION 20. The provisions of the Uniform Administrative Procedures Act, compiled in title 4, part 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this part.

SECTION 21.

(a) Any licensee may retire such licensee's license by submitting a form prescribed by the board accompanied by the current active license certificate, and a fee of twenty-five dollars (\$25.00). Upon receipt of an acceptable application to retire, the board shall issue a retired inactive license certificate to the contractor. The holder of a

retired license shall not be entitled to practice as a contractor until the license is reinstated.

(b) Any licensee who is not engaged in work or activities which require a contractor's license may apply for a retired license.

(c) A retired license shall be valid for a period of one (1) year from the annual renewal date. If the inactive licensee wishes to remain inactive for any portion of a subsequent calendar year, the licensee shall pay an additional inactive fee of twenty-five dollars (\$25.00), on or before the annual renewal date of each such year.

(d) The board shall not refund any of the renewal fee which a licensee may have paid prior to the receipt of the application to retire.

(e) A retired license may be reinstated by submitting an application acceptable to the board, by paying the full renewal fee for an active license and by fulfilling all other requirements of this part. No examination shall be required to reinstate a retired license.

(f) The retired status of a license shall not bar any disciplinary action by the board against a licensee for any of the causes provided in this part.

(g) In no event may a retired license be renewed for more than seven (7) years dated from the time of initial application.

(h) No retired license is transferable.

SECTION 22. Notwithstanding any provision of title 66, part 11, or any other provision of the law to the contrary, the provisions of title 66, part 11, shall not be available on single family residential construction to any person, firm or corporation who performs residential construction, and who is required to be licensed as a contractor pursuant to the provisions of this part, and fails to have a valid license when acting as a contractor.

SECTION 23.

(a)

(1) The director of the board, acting on behalf of the board, is authorized to issue citations against persons acting in the capacity of or engaging in the business of a contractor without a license in violation of this part.

(2) Each citation shall be in writing and shall describe with particularity the basis of the citation.

(3) Each citation shall contain an order to cease all violations of this part and an assessment of a civil penalty in an amount not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000).

(b) The board shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this part.

(c) The sanctions authorized pursuant to this part shall be in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this part.

SECTION 24. Service of a citation issued pursuant to § 62-6-201 may be made by certified mail at the last known business address or residence address of the person cited.

SECTION 25. A citation issued pursuant to § 62-6-201 shall be issued by the director within (1) year after the act or omission which is the basis for the citation.

SECTION 26. Any person served with a citation pursuant to § 62-6-201 may appeal to the director by written notice postmarked within fifteen (15) working days after service of the citation with respect to violations alleged, scope of the order, or amount of civil penalty assessed.

SECTION 27. If a person cited timely notifies the director that such person intends to contest the citation, the director shall afford an opportunity for a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, part 5, part 3.

SECTION 28. After all administrative appeals have been exhausted, the director may apply to the appropriate court for a judgment in the amount of the civil penalty, plus applicable court costs, and for an order to cease activities in violation of § 62-6-103. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

SECTION 29.

(a) Notwithstanding any other provision of law to the contrary, the director may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued a license as a general contractor.

(b) Any outstanding injury to the public shall be settled satisfactorily before a license as a general contractor is issued.

SECTION 30. This act shall take effect July 1, 2001, the public welfare requiring it.